SUPREME COURT, U.S.
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JOHN F. DAVIS, CLERK

No. 1031 and 1081

In the Supreme Court of the United States

OCTOBER TERM, 1968

MARVIN J. MORSE,
Petitioner,

vs.

D. A. HINDMAN and CHARLEY A. LYND,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND TO THE SUPREME COURT OF THE STATE OF KANSAS

Motion for Leave to File Petition for Rehearing and Petition for Rehearing

MARVIN JAMES MORSE
980 Barkley Ct.
Pinole, California
Pro-se Petitioner

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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Motion for Leave to File Petition for Rehearing

Marvin J. Morse, pro se petitioner herein, respectfully moves for leave to file the annexed petition for rehearing of the order of this court denying the petitions for writs of certiorari in these cases, entered on April 1, 1969. The petition herein submitted does not fully comply with the requirements of rule 58(2) in that it is not supported by a statement of counsel of record for the reason that petitioner herein has not been represented by counsel in either the Federal or State court proceedings nor before this court.

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Petition for Rehearing

Petitioner respectfully requests that the Court grant rehearing of the order dated April 1, 1969, which denied certiorari in these cases and that the court now grant certiorari.

In the respondents reply brief counsel therein has argued that the only attack made by petitioner on the 1944 State Court suit to construe paragraph sixth of the will and to quiet title to the disputed property in Charley A. Lynd, is the failure to join those three parties whom counsel names on pages 11 and 12 of their reply brief.

However, in the original petition (complaint) in petitioners amended complaint, in the brief filed, and in oral arguments before the Court petitioner attacked that judgment as void on its face for failing to name the indispensable parties in a suit to construe a will, to wit: George W. Atherton as life-tenant to the property; George and Hattie Atherton as heirs of a deceased vested remainderman and as grantors of a mortgage; along with those three parties listed by counsel for respondents as *contingent beneficiaries* under paragraph eleventh of the will. That the judgment is void on its face for failing to make service or get jurisdiction over the spouses of the non-resident remaindermen who were named as defendants therein and whose names and addresses appear in the affidavit for constructive service, and for numerous other defects apparent in the records involving the will and proceedings had under it.

That the Federal Courts, having diversity jurisdiction, can entertain a suit to set aside a State court judgment that is void on its face is well established. *Falsetti v. Indiana Oil Purchasing Co.*, 215 F. Supp. 420; *Arenas v. United States,* 95 F. Supp. 962; that once jurisdiction has attached in an *in rem* suit in Federal Court that court has exclusive jurisdiction was the subject of the original petitions; and the Federal District court cannot properly abate its proceedings in favor of the State Courts is well established by previous decisions of this court.

For the reasons set forth, rehearing and certiorari should be granted.

MARVIN JAMES MORSE
980 Barkley Ct.
Pinole, California
Pro-se Petitioner

CERTIFICATE

Pursuant to Rule 58, I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in paragraph 2 of Rule 58.

MARVIN JAMES MORSE
Pro-se Petitioner